WILENTZ, GOLDMAN & SPI R
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
PLAZA 9 BUILDING
900 ROUTE 9
P.O. BOX 10
WOODBRIDGE, N.J. 07095
(201) 636-8000
TELECOPIER
(201) 636-0860

DAVID T. WILENTZ
G. GEORGE GOLDMAN (1922-1968)
HENRY M. SPITZER
WARREN W. WILENTZ
MATTHIAS D. DILEO
ROBERT A. PETITO
NORRIS BROWN [D]
HAROLD G. SMITH
FREDERIC K. BECKER
DOUGLAS T. HAGUE
NICHOLAS L. SANTOMASSO
ALFRED J. HILL
FRANCIS X. JOURNICK (1982-1982)
RICHARD F. LERT
JOHN A. HOFFMAN
STANLEY L. BENN
STEPHEN E. BARCAN
ROBERT J. CIRAFESI
FRANCIS V. BONELLO
VINCENT P. MALTESE
KENNETH B. FALK [D]
DAVID M. WILDSTEIN
ALAN M. DARNELL
GORDON J. GOLUM
JEROME J. BRUDER
FRANK M. CIUFFANI
MARVIN J. BRAUTH
STUART A. HOBERMAN [D] [*]
NICHOLAS W. McCLEAR
STEPHEN A. SPITZER
RICHARD R. BONAMO [*]
HELEN DAVIS CHAITMAN [D]

MILTON B. CONFORD
COUNSEL

LAWRENCE J. FREUNDLICH [D]
FREDERICK J. DENNEHY
PETER C. PARAS
RICHARD M. BROCKWAY
BRIAN J. MOLLOY
ANNE S. BABINEAU [D]
ROY H. TANZMAN
RANDALL J. RICHARDS
CHRISTINE O. PETRUZZELL
BARRY T. ALBIN [D]
ROGER B. KAPLAN [D]
PHILIP A. PANIGIAN [D] [I]
BONNIE M. S. REISS
SHELDON E. JAFFE [*]
RICHARD M. METH
RICHARD P. DAMGERFIELD [*]
KAREN ANN KUBULAR
STEVEN J. TRIPP
RICHARD J. BINDELGLASS
LINDA LASHBROOK
CHRISTOPHER M. PLACITELLA
JAMES E. TRABILSY
MAUREEN S. BINETTI
JAMES M. BURNS
LILIANN MESSINA NUGENT
JOHN P. PAONE, JR.
MICHAEL J. BARRETT
AIMEE L. MANOCCHIO
PETER C. VISCEGLIA
ROBERT J. LEVIN
ANGELO JOHN CIFALDI [*]
DOUGLAS WATSON LUBIC

[D] CERTIFIED CIVIL TRIAL ATTORNEY
[D] CERTIFIED CRIMINAL TRIAL ATTORNEY

[I] ALSO ADMITTED IN V.I.
[*] ALSO ADMITTED IN D.C.
[*] ALSO ADMITTED IN PA.
[*] ALSO ADMITTED IN N.Y.

April 30, 1985

TO ALL COUNSEL
(See attached list)

Re: Cipollone v. Liggett, et als.
Civil Action No. 83-2864SA

Gentlemen:

Pursuant to F.R.C.P. 26(b)(4), please be advised that plaintiff plans to call Dr. Jerome Jaffe to testify in this matter on the subject matter of cigarette smoke and addiction. The following is the substance of the facts and opinions to which Dr. Jaffe is expected to testify, together with a summary of the grounds for each opinion:

Dr. Jaffe is of the opinion that the weight of scientific evidence (Schedule A, attached hereto, is a list of some examples of scientific studies that Dr. Jaffe will rely upon to support his opinion) shows that smoking cigarettes is more than a habit; rather, for many smokers, inhaled cigarette smoke creates a dependence and leads to compulsive use.

Dr. Jaffe is of the opinion that inhaled cigarette smoke contains a substance that is psychoactive in that it affects the chemistry of the brain and nervous system.

Dr. Jaffe is of the opinion that if a heavy smoker gives up cigarettes, or simply delays beyond a few hours lighting the next one, that smoker will probably experience physiological and psychological distress.

Dr. Jaffe is of the opinion that the weight of scientific evidence is that with tobacco (nicotine), as with other

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drugs, there eventually comes a time for many users when the abrupt cessation of use causes a distinct form of physical dependence (neuroadaptation)--one that is specifically and immediately alleviated by inhaling nicotine. Though the physical dependence syndromes differ with different drugs, they have this in common: once the physically depedent state develops, relief of the discomfort of abstinence becomes a new source of reinforcement for the drug-using behavior.

Dr. Jaffe is of the opinion that there exists, in many smokers, a tobacco withdrawal syndrome.

Dr. Jaffe is of the opinion that there is a strong tendency among former smokers to relapse, sometimes months or even years, after quitting. Cigarette smokers exhibit this tendency to perhaps at least as great a degree as do users of other drugs or substances of abuse.

Dr. Jaffe is of the opinion that the addictive nature of cigarette smoking is one reason why smokers who started smoking before 1966 have continued to smoke after certain "warnings" appeared on cigarette packages starting in 1966.

Dr. Jaffe is of the opinion that researchers who have studied the role of nicotine in helping to establish and maintain tobacco dependence have concluded, based upon the weight of scientific evidence, that nicotine reinforces and strengthens the desire to smoke and causes users to keep on smoking.

Dr. Jaffe is of the opinion that the presence of nicotine in the body of the smoker causes a wide range of physical changes to occur.

Dr. Jaffe is of the opinion that nicotine can affect the body in different ways. In stressful situations, it can act as an anti-anxiety agent like a tranquilizing drug, while in serene situations, it can act as a stimulant like the amphetamines.

Dr. Jaffe is of the opinion that the characterization of cigarette smoking as a drug dependence or drug addiction is supported by both laboratory and population studies and appears

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in the World Health Organization's Ninth Revision to the International Classification of Diseases and in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition (at page 176).

Dr. Jaffe is of the further opinion that with each cigarette smoked, the pharmacological effect strengthens the tendency to continue the drug use. In addition, Dr. Jaffe is of the opinion that each repetition of the behavior weakens the likelihood that motives for non-use can modify the developing pattern of drug use.

Dr. Jaffe is of the further opinion that Mrs. Rose Cipollone was addicted to cigarettes. This opinion, in addition to the references referred to above, is based upon:

(1) Testimony given by Rose Cipollone under oath on January 26, 1984, January 27, 1984, February 28, 1984 and September 5, 1984.

(2) Dr. Jaffe's interview with Rose Cipollone on December 23, 1983. At that time, Mrs. Cipollone was alert and responded to a number of questions asked by Dr. Jaffe. As a result of these inquiries, Dr. Jaffe learned that:

Mrs. Cipollone began smoking as a teenager and was a heavy smoker by age 17. She tried to quit smoking during her first pregnancy in 1947 but reported consistent feelings of wanting a cigarette. ("I started smoking the minute I went into labor.") When asked whether she ever thought about trying to quit again she stated:

"I didn't think about quitting because I didn't think I could bear it. I avoided all occasions that would lead to thinking about stopping. I always made sure cigarettes were there. Sometimes, I would have extra food delivered just to have cigarettes delivered."

When asked about the last statement, Mrs. Cipollone explained that she didn't drive. "Sometimes, if I got low on cigarettes late at night, I would go to sleep early so there would be one in the morning."

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Mrs. Cipollone did not stop smoking during her two subsequent pregnancies. Her morning routine was as follows: She got up, immediately put on a pot of water for coffee, then smoked a cigarette, then brushing of teeth, washing and toilet. She doesn't recall waking up frequently to have a cigarette, but does remember that any time she did have to get up (e..g., when a child was sick or needed a bottle) she would invariably smoke. Her last cigarette of the day was smoked in the bathroom just before she got into bed. ("I had to scrub the walls regularly.")

From 1942 to 1955, she smoked Chesterfield regulars; from 1955 to 1968, she smoked L & M filters. ("I guess subconsciously I thought they would be less dangerous.") From 1968 to 1972, she smoked Virginia Slims, and from 1972 to 1974, she smoked Parliament recessed filters." From 1974 to 1981, she smoked True Blue 100's but reports that her smoking rate went up to about 2 packs per day. "I actually smoked more because of the low tar. I thought it would be safer. ...I went to a doctor who said, 'If you're going to smoke, smoke these.' His name was Dr. Lowe. I saw him for checkups. He was a smoker himself."

Mrs. Cipollone gave a history that provides strong indirect support for a serious degree of dependence. She always inhaled deeply. She continued to smoke despite the fact that her "husband hated smoking. ... I was a serious smoker. ... I saw ads for SmokEnders, but I would try to ignore them. ... I would leave the room if I thought there would be material (on television) on the effects of smoking."

Mrs. Cipollone would frequently have guests and frequently some would ask for cigarettes. Occasionally, guests would smoke more than she had anticipated and she recalls occasions when she "would get cigarettes out of the trash if there were none left after company." She recalls quite clearly that when hospitalized for surgery (see below) she would carefully put cigarettes on the night table before going to surgery so she would be able to reach them through the bed bars.

Mrs. Cipollone revealed to Dr. Jaffe, but has never revealed to her husband, that despite her first lung surgery in

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1981, she did not or could not stop smoking entirely. ("I couldn't stop thinking about them. I still think about them.") Following the surgery in 1981, "I wanted a cigarette but knew I couldn't have it; I gave up coffee and T.V. because they were associated with it. After the first surgery, sometimes I would light a cigarette and throw it away. I never smoked more than 3-4 a day. I hid them in the piano bench. I didn't go back to coffee until 6 months. Every time I played cards I wanted a cigarette. When I saw others smoking I wanted one."

When asked if she experienced any adverse effects from stopping she said, "I was more grumpy and short tempered, - I'm still that way, - its persisting. I had one cigarette - it made me calmer and more relaxed but I felt guilty."

Since her second lung operation in May-June 1982, Mrs. Cipollone has not smoked.

Dr. Jaffe asked Mrs. Cipollone to fill out several forms so that she could recall how she felt when she first stopped smoking. The first form was designed to measure withdrawal and craving. On this scale Mrs. Cipollone scored close to the maximum, suggesting a high degree of craving and withdrawal compatible with a high degree of dependence. On another scale, which gauges motives for smoking, Mrs. Cipollone filled out the form as she might have done when she was still smoking. Analysis revealed high scores on all measures except automatic or habit-like smoking. Thus, there was relaxation and tension-reduction smoking, as well as a high degree of dependency.

Mrs. Cipollone told Dr. Jaffe the following with regard to family health and other factors:

Mrs. Cipollone's father was a smoker. He died of a stroke at age 50. Her mother also died of a stroke in 1955. There were no alcohol problems in the family and Mrs. Cipollone herself has "never been a drinker." Mrs. Cipollone's children do not smoke.

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Her medical history includes treatment for gall baldder disease in 1964 (age 39), hysterectomy and unilateral ovectomy in 1966, later removal of the remaining ovary. Subsequently, she had the lung resection in 1981 (more fully described elsewhere), an additional lung surgery in May-June of 1982, and surgery for an adrenal tumor in 1983.

In summary, Dr. Jaffe is of the opinion that Mrs. Cipollone gives a reasonably typical history of a heavily dependent smoker who after trying to stop but failing thereafter avoids making serious efforts but temporizes by switching to what she felt were safer cigarettes. Even lung surgery did not stop her entirely, but from time to time she had a puff or two on a cigarette. She experienced craving and withdrawal. To the degree dependence reduces the smoker's capacity to make rational choices, Mrs. Cipollone's capacity to respond rationally to the information on risks of smoking provided by the government and other sources of information was substantially reduced.

Very truly yours,

ALAN M. DARNELL

AMD/wp

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SCHEDULE A

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ATTORNEY LIST

Alan S. Naar, Esquire
Greenbaum, Rowe, Smith, Ravin, Davis
and Bergstein
Engelhard Building
P. O. Box 5600
Woodbridge, NJ 07095

Raymond Drozdowski, Esquire
Brown, Connery, Kulp, Wille, Purnell
and Greene
518 Market Street
P. O. Box 1449
Camden, NJ 08101

Steven C. Parrish, Esquire
Shook, Hardy and Bacon
1101 Walnut
Kansas City, Missouri 64106

Barry L. Shapiro, Esquire
Sills, Beck, Cummis, Zuckerman, Radin,
Tischman and Epstein
33 Washington Street
Newark, NJ 07102

Francis K. Decker, Esquire
Webster and Sheffield
One Rockerfeller Plaza
New York, NY 10020

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